

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 1690 - SB 1767

February 20, 2022

SUMMARY OF BILL: Establishes that one of the purposes of the Prevention of Youth Access to Tobacco, Smoking Hemp, and Vapor Products Act is to prohibit the sale of products containing hemp-derived cannabinoids to, or purchase of products containing a hemp-derived cannabinoid on behalf of, persons under 21 years of age.

Defines a “hemp-derived cannabinoid as:

- A cannabinoid other than delta-9 tetrahydrocannabinol, or an isomer derived from such cannabinoid, that is derived from hemp in a concentration of more than 0.1 percent; or
- A hemp-derived product containing delta-9 tetrahydrocannabinol in a concentration of 0.3 percent or less.

Further includes in such definition, but is not limited to, Delta-8 tetrahydrocannabinol.

Specifies what is not included in such definition, including, but not limited to Cannabidiol (CBD).

Prohibits any person under 21 years of age from possessing, transporting, purchasing or accepting a product containing a hemp-derived cannabinoid, or presenting or offering to any person any false fraudulent proof of age for the purpose of purchasing or receiving a product containing a hemp-derived cannabinoid.

Prohibits the sale of a hemp-derived cannabinoid through a vending machine except in certain age-restricted locations.

Requires the Department of Agriculture (TDA) to enforce these new prohibitions regarding hemp-derived cannabinoid sales to minors.

Creates a new wholesales tax on the sale on products containing hemp-derived cannabinoids. Such tax is equal to 6.6 percent of the wholesale sales price per hemp-derived product sold.

Requires the Commissioner of the TDA to administer and collect such tax. Requires that all revenue received by the TDA be deposited into a special account in the General Fund and allocated to the TDA to used exclusively for the regulation and promotion of the hemp industry in this state (for purposes of this note, such fund shall be titled the “Hemp Fund”).

Creates a licensing requirement for any person or business who sells or distributes products containing a hemp-derived cannabinoid. Requires any such person or business to acquire such license by June 1, 2023 or the commencement of business, whichever is later. Licenses expire May 31 of each year.

Requires the TDA to administrate and enforce the licensing program. Sets the following fees, to be paid at time of application:

- Retailer - \$200 for each retail location;
- Wholesaler - \$200 for each separate warehouse or wholesale location.

Establishes a new penalty against a person or business selling hemp-derived cannabinoids without a license equal to the following:

- A penalty in the amount of the license fee for each month or part of a month during which the unlicensed activity or failure persists; and
- A penalty of no more than \$250 per day for each day the unlicensed activity or failure persists. This penalty applies to a licensed person who continues to engage in such business or activity after receiving notice that the respective license has been revoked or suspended.

Establishes that is a Class C misdemeanor offense to engage in the business of selling or distributing products containing hemp-derived cannabinoids in this state without a valid license.

Establishes causes of revocation and appeal procedures, including contested case hearings.

Provides the Commissioner of the TDA with the authority to subpoena for information related to licensees, and requires such subpoenas to be served by the appropriate county sheriff or deputy. Entitles such sheriff or deputy fees for serving such subpoenas and that fees and mileage expense reimbursements shall be allowed any witness. Stipulates that all witness fees, mileage expenses, and all fees of sheriffs for notices or subpoenas are borne by the TDA.

FISCAL IMPACT:

Increase State Revenue – \$560,600/FY22-23/Hemp Fund
\$1,082,200/FY23-24 and Subsequent Years/Hemp Fund

Increase State Expenditures – \$141,900/FY22-23/General Fund
\$136,700/FY23-24 and Subsequent Years/General Fund

\$375,700/FY22-23/Hemp Fund
\$360,100/FY23-24 and Subsequent Years/Hemp Fund

Assumptions:

Revenue

- This legislation creates a 6.6 percent tax on wholesale sales of hemp-derived cannabinoids.
- Revenue from this tax is required to be distributed into a special account in the General Fund (Hemp Fund) and allocated to the TDA for the regulation and promotion of the hemp industry in this state.
- Based on research conducted by the Brightfield Group, the hemp market brought in approximately \$4,700,000,000 in 2020.
- The exact percent of this market, to which this legislation is applied is not known but it is assumed to apply to approximately 25 percent of such market.
- This legislation will be applicable to a market valued at approximately \$1,175,000,000 ($\$4,700,000,000 \times 25\%$).
- According to the 2020 U.S. Census, the United States had an overall population of 331,449,281, of which approximately 2.085 percent was comprised of Tennessee residents (6,910,840).
- The market in this state, to which this legislation applies, is valued at \$24,498,750 ($\$1,175,000,000 \times 2.085\%$).
- It is assumed that the market value of such products is related to retail sales, which are assumed to include a 55 percent profit margin.
- Accounting for such retail sales profit margin, it is assumed that wholesale sales of such products in Tennessee are equal to \$15,805,645 ($\$24,498,750 / 1.55$).
- A recurring increase in state revenue of \$1,043,173 ($\$15,805,645 \times 6.6\%$).
- It is assumed that the TDA regulatory program will take until January 1, 2023 to be in place and begin taxing such hemp-derived products; therefore, revenue on wholesale sales of such products will only be equal to 50 percent of annual sales in FY22-23.
- An increase in state revenue to the Hemp Fund in FY22-23 of \$521,587 ($\$1,043,173 \times 50\%$).
- A recurring increase in state revenue to the Hemp Fund in FY23-24 and subsequent years of \$1,043,173.
- This legislation applies a \$200 annual licensing fee to each wholesale and retail location of hemp-derived cannabinoid products.
- This legislation does not specify where such licensing fee revenue is to be distributed.
- For purposes of this fiscal note, it is assumed that licensing fee revenue is allocated to the Hemp Fund.
- The exact number of wholesale and retail locations of such products in this state is unknown.
- For purposes of this fiscal note, it is assumed that there will be 50 retail licenses issued by grand division, or 150 retail licenses issued statewide.
- It is assumed that there will be approximately 15 wholesale licenses issued per grand division, or approximately 45 wholesale licenses issued statewide.
- An increase in state licensing fee revenue in FY22-23 and subsequent years to the Hemp Fund of \$39,000 [$(150 \text{ retail} + 45 \text{ wholesale}) \times \200].

- A total increase in revenue to the Hemp Fund in FY22-23 of \$560,587 (\$521,587 + \$39,000).
- A total increase in state revenue to the Hemp Fund in FY23-24 and subsequent years of \$1,082,173 (\$1,043,173 + \$39,000).
- This legislation establishes penalty fees for violations of this act; however, for purposes of this fiscal note, any such fee revenue is assumed to be not significant.

Expenditures

- Based on information provided by the TDA, the Department will require 2 additional food and dairy inspector 2 positions per grand district, or 6 additional inspector positions statewide.
- There will be a recurring increase in state expenditures of \$360,120 [(\$45,360 salary + \$14,460 benefits + \$200 supplies) x 6 Food and Dairy Inspector-2 positions] in FY22-23 subsequent years.
- There will be a one-time increase in state expenditures for such inspector positions of \$15,600 [(\$1,000 computer + \$1,600 technology/network) x 6 positions].
- Expenditures incurred by the TDA for administration and enforcement of this legislation will be paid for out of the Hemp Fund.
- An increase in state expenditures to the Hemp Fund in FY22-23 of \$375,720 (\$360,120 + \$15,600).
- An increase in state expenditures to the Hemp Fund in FY23-24 and subsequent years of \$360,120.
- Based on information provided by the Department of Revenue (DOR), the Department will require 2 additional audit positions for this new tax.
- There will be a recurring increase in state expenditures of \$136,692 [(\$52,500 salary + \$15,646 benefits + \$200 supplies) x 2 Tax Auditor-2 positions] in FY22-23 subsequent years.
- There will be a one-time increase in state expenditures for such inspector positions of \$5,200 [(\$1,000 computer + \$1,600 technology/network) x 2 positions].
- Expenditures incurred by the DOR for administration and enforcement of this legislation will be paid for out of the General Fund.
- An increase in state expenditures to the General Fund in FY22-23 of \$141,892 (\$136,692 + \$5,200).
- An increase in state expenditures to the General Fund in FY23-24 and subsequent years of \$136,692.

Other

- There will not be a sufficient number of prosecutions for state or local government to experience any significant increase in revenue or expenditures.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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